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FILED
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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1966

No. 830

GRACE LINE, a corporation and SS "SANTA JUANA,"
Petitioners,

v.

MICHAEL J. KANTON,
Respondent.

MOTION FOR LEAVE TO FILE ANNEXED PETITION FOR REHEARING

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v.		
MICHAEL J. KANTON,	*Respondent.*	

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING

Grace Line, a corporation, and the SS "SANTA JUANA," petitioners, respectfully move for leave to file the annexed petition for rehearing of the order of this Court denying the petition for writ of certiorari in this case, filed on December 5, 1966, and denied on January 9, 1967.

Rehearing is sought at this time because, as is pointed out more fully in the annexed petition, in *United States v. Stephen Robert Demko,* No. 76, October Term, 1966, decided December 5, 1966, 35 Law Week 4028, the applicable federal compensation act was held the exclusive remedy for injuries. In *Demko, supra,* Mr. Justice Black held for the majority of the Court that the right of recovery granted by a federal compensation act is the

exclusive remedy and that until Congress provides differently, the Court must give full effect to Congressional intent.

The decision in *Demko, supra,* was not available at the time of the printing of the petitioner's brief.

Furthermore, the Court on December 6, 1966, in the case of *Jackson v. Lykes Bros. Steamship Co.,* 185 So. 2d 342, No. 575 in October Term, 1966, granted certiorari for clarification of the scope of the decision of *Reed v. SS "YAKA"*, 373, U.S. 410, 10 L.Ed.2d 448, 83 Sup. Ct. 1349, and the further question if the Longshoremen's & Harbor Workers' Act constitutes the exclusive remedy for an injured stevedore, which are identical questions raised by the petitioner.

Uncertainty prevails as to the construction previously accorded *Reed v. SS "YAKA", supra,* as further indicated by a petition for certiorari filed January 24, 1967, in the case of *Pacific Inland Navigation Co. v. Course,* No. 1000, in October Term, 1966, involving the question of whether the Longshoremen and Harbor Workers Act is exclusive remedy to an injured harbor worker.

EDWARD S. FRANKLIN
JOHN P. SULLIVAN
Counsel for Petitioners

January 27, 1967

IN THE

Supreme Court of the United States

October Term, 1966

GRACE LINE, a corporation, and SS "SANTA JUANA,"	*Petitioners,*	No. 830
v.		
MICHAEL J. KANTON,	*Respondent.*	

PETITION OF GRACE LINE, A CORPORATION, AND SS "SANTA JUANA" FOR REHEARING

The solution of the questions (1) does Section 5 of the Longshoremen's and Harbor Workers' Compensation Act preclude a direct damage action against a shipowner-employer, and (2) does *Reed v. SS "YAKA,"* 373 U.S. 410, 10 L.Ed.2d 448, 83 Sup. Ct. 1349, justify such direct action, where the shipowner-employer is a single entity and that no third party is involved, are of paramount importance to the nation's maritime industry.

Petitioners' contention that the Longshoremen's and Harbor Workers' Compensation Act is the exclusive remedy for an injured employee is based on the plain wording of Section 5 of the Longshoremen's and Harbor Workers' Compensation Act. This clearly indicates Congressional intent that a shipowner-employer was immunized from direct suit by an injured workman.

The Court gave effect to such Congressional intent in the case of *United States v. Stephen Robert Demko,*

No. 76, October Term, 1966, Cert. granted 383 U.S. 966, 350, F.2d 698 (3 C.C.A., 1965), decided on December 5, 1966, Mr. Justice Black said:

"Historically, workmen's compensation statutes were the offspring of a desire to give injured workers a quicker and more certain recovery than can be obtained from tort suits based on negligence and subject to common-law defenses to such suits. Thus compensation laws are practically always thought of as substitutes for, not supplements to, common-law tort actions. A series of comparatively recent cases in this court has recognized this historic truth and ruled accordingly. *Johansen v. United States*, 343 U.S. 427, and *Patterson v. United States*, 359 U.S. 495, for instance, are typical of the recognition by this Court that the right of recovery granted groups of workers covered by such compensation laws is exclusive. Such rulings of this court have established as a general rule the exclusivity of remedy under such compensation laws. In *Johansen v. United States, supra*, at 440-441, this Court stated 'where the Government has created a comprehensive system to award payments for injuries, it should not be held to have made exceptions to that system without specific legislation to that effect.' Later in *Patterson v. United States, supra*, at 496, this Court emphatically refused to abandon the *Johansen* ruling calling attention to the fact that Congress by specific statute could change the *Johansen* 'policy at any time.' Consequently we decide this case on the *Johansen* principle that, where there is a compensation statute that reasonably and fairly covers a particular group of workers, it presumably is the exclusive remedy to protect that group.

• • •

"• • • This particular federal compensation law, created to meet, in the accepted fashion of such laws, the special need of a class of prisoners, has now for more than 30 years functioned to the satisfaction of Congress, except as Congress broadened

its coverage in 1961. Until Congress decides differently we accept the prison compensation law as an adequate substitute for a system of recovery by common-law torts."

In *Jackson v. Lykes Bros. Steamship Co.*, 185 So.2d 342, No. 575 in the October Term, 1966, certiorari granted December 6, 1966, the Louisiana Court of Appeals, 4th Circuit, considered the question as to whether the *Reed v. SS "YAKA," supra*, decision emasculated and rendered of no effect the exclusive remedy provisions of Section 5 of the Longshoremen's and Harbor Workers' Act. The Louisiana court in holding the Longshoremen's and Harbor Workers' Act was exclusive, states at 185 So.2d 345:

> "An analysis of the *YAKA* case reveals language which suggests that an *in personam* remedy may be available; the analysis likewise reveals that there exists reason for believing that the section of the Longshoremen's and Harbor Workers' Act referred to hereinabove has been taken upon the judicial anvil and hammered into an unexpected shape.
>
> "In any event, we are of the opinion that it exemplifies more judicial integrity to conclude that the rationale emanating from *YAKA* merely permits a longshoreman to bring an action *in rem* against his employer in the federal court."

The most recent case decided by this Court, *United States v. Stephen Robert Demko, supra*, establishes the exclusive remedy of a Congressional enacted compensation act. The rationale of *Demko, supra*, should be applied here.

The interpretation placed upon *Reed v. SS "YAKA," supra*, and the Longshoremen's and Harbor Workers' Act is constitutionally impermissible as it denies the petitioner

its *"quid pro quo"* in concurrently making the shipowner-employer legally liable for compensation payment under the Longshoremen's and Harbor Workers' Compensation Act, to an injured employee, and at the same time directly liable for the injured employee in a damage action, specifically precluded by Section 5 of the Longshoremen's and Harbor Workers' Compensation Act.

CONCLUSION

For the reasons set forth above and in the petition for writ of certiorari, we respectfully urge that a rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Circuit Court of Appeals for the Ninth Circuit.

Respectfully submitted,

EDWARD S. FRANKLIN
JOHN P. SULLIVAN
Counsel for Petitioners

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for purposes of delay and is restricted to the grounds specified in Rule 58 of the rules of this Court.

EDWARD S. FRANKLIN
Counsel for Petitioner